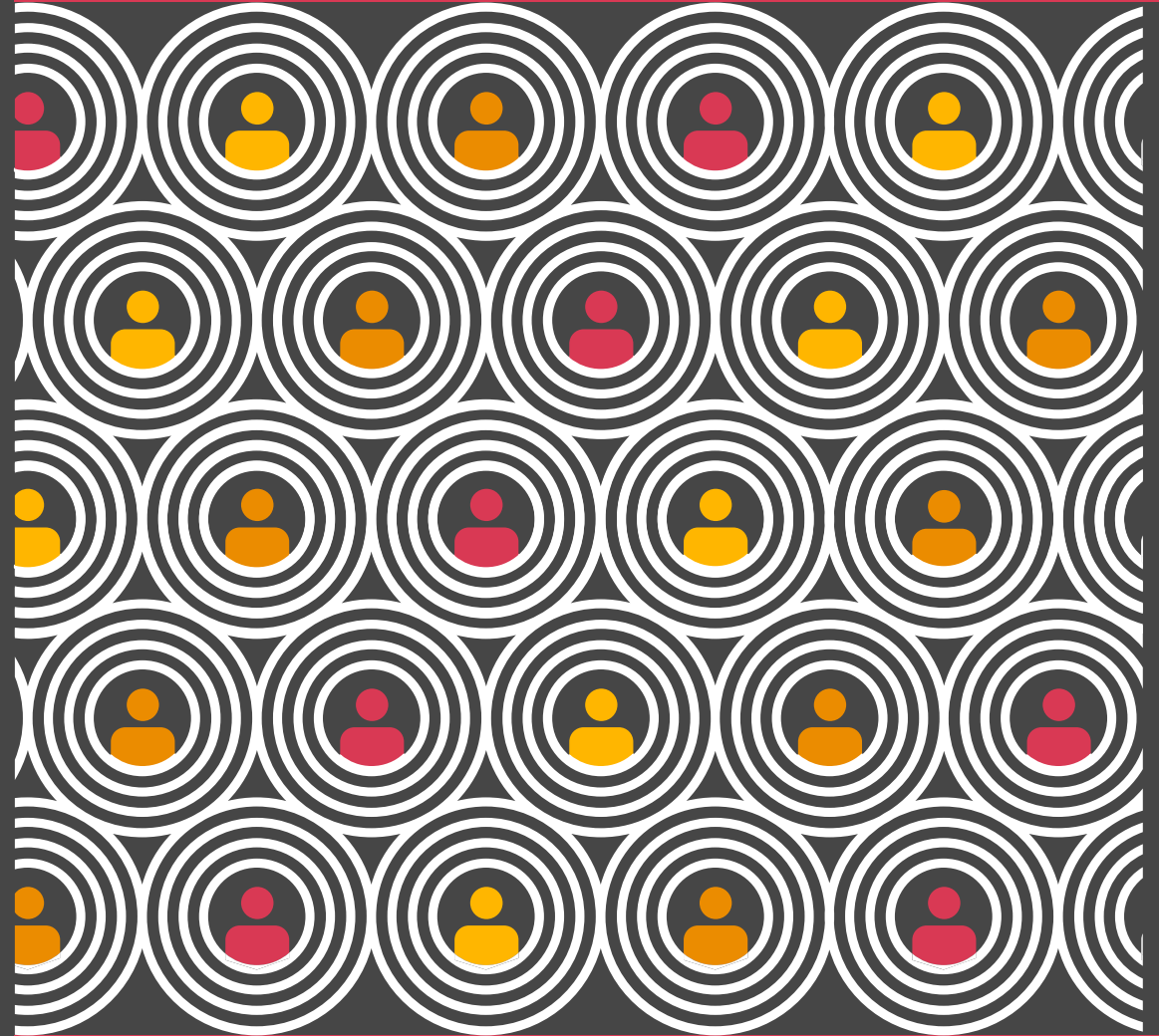


Fundamentals of interactions with HMRC for in-house Counsel

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Agenda

Topic

- 1 Basics of UK tax system
- 2 HMRC's powers
- 3 Types of HMRC intervention
- 4 Tax disputes vs commercial litigation

Introduction to the UK direct tax system

Self-Assessment system

The UK direct tax system is primarily based on a self-assessment model, which places the responsibility on taxpayers to report their income and calculate their tax liabilities.

Once a return is filed, HMRC generally have 12 months to 'open an enquiry' i.e. notify you that they have questions about your tax return and the positions you've taken. HMRC will check whether the positions taken in the return have been prepared in accordance with the law.

The reason the 12 month deadline exists is to try to give taxpayers certainty – HMRC can only go further back in certain circumstances which we will come onto later.



HMRC structure

HMRC's structure

- HMRC has a large and complex structure, and it is important to understand who you are dealing with should an enquiry be opened.
- HMRC's customer compliance structure is arranged by taxpayer size.

Team	Large business	Mid-size business	Small business and individuals
Parameters	Turnover £200m+	£2m – £200m turnover	Up to £2m turnover/net worth less than £2m
Specialist programmes	High Risk Corporate Programme	Enquiry Co-Ordinator Programme	Campaigns + projects

CCMs versus specialists

- Customer compliance managers are allocated to cases involving large business
- HMRC uses a **risk-based approach** to select returns for enquiry, but also conducts **random checks**.
- HMRC conducts 'business risk reviews' for taxpayers in large business.

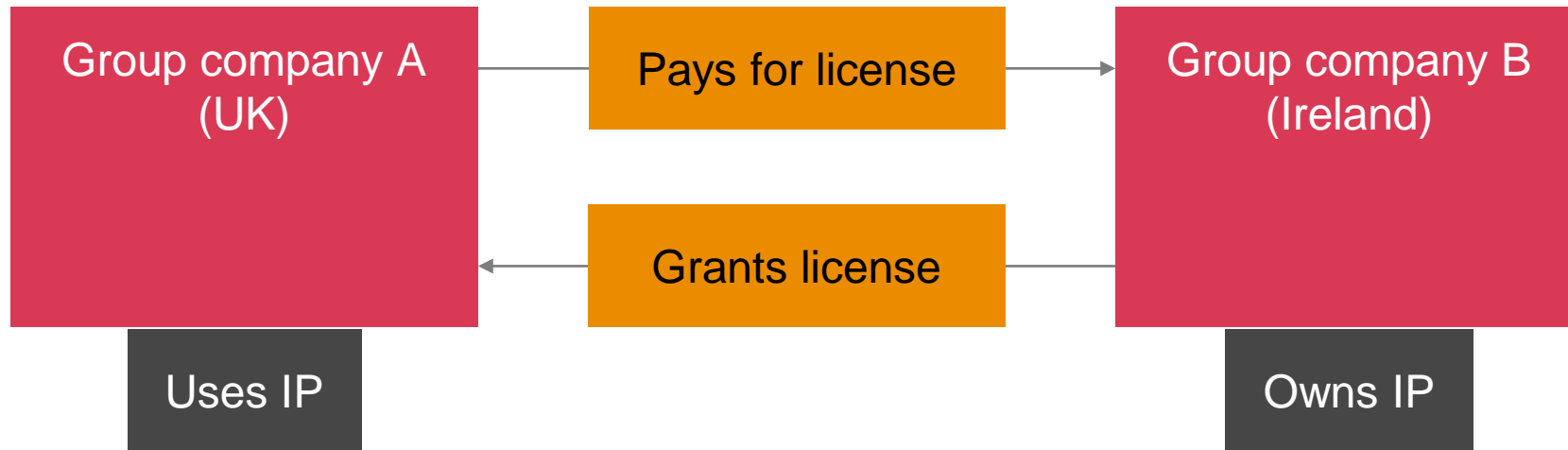
Discovery assessments

Discovery assessments

- **Discovery assessments** allow HMRC to assess tax outside the normal enquiry window (i.e. 12 months from date of filing) under specific conditions.
 - HMRC has **4 years** to issue a discovery assessment (6 years where the discovery is due to carelessness, 20 years where it is due to deliberate behaviour).
 - **New Information:** HMRC must have “discovered” information that was not “made available” at the time the original tax return was filed.



Case study



An enquiry has been opened, what next?

HMRC information powers – Schedule 36 Finance Act 2008



Power to obtain information and documents.



Power to inspect premises and other property.



Power to issue data-holder notices to gather data.

What information are HMRC entitled to?



'Reasonably required'



Not subject to privilege



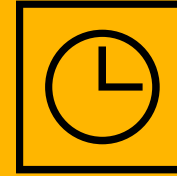
Specified or described



Possession of power



Statutory records



6-year limit

To reply or not to reply?

In our fictional example, HMRC has informally requested:

- All emails sent and received by the General Counsel and CEO of company A for the last 5 years
- The comparables used to determine the price paid for the license
- The license agreement between A and B
- An internal memo prepared by group company B



Correspondence stage



Depending on the type of enquiry / strategy there might be:

- Letters to HMRC appending documentary evidence to support your position
- Email reviews / document reviews based on agreed key search terms
- Interviews with relevant people in the business

Other considerations:

- Counsel's opinion
- Settlement offers
- Identify any areas of agreement and settle part of the enquiry (if appropriate)
- Impact on other jurisdictions

Closing an enquiry

An enquiry is considered complete when an officer issues a closure notice.

There are 2 types of closure notice:

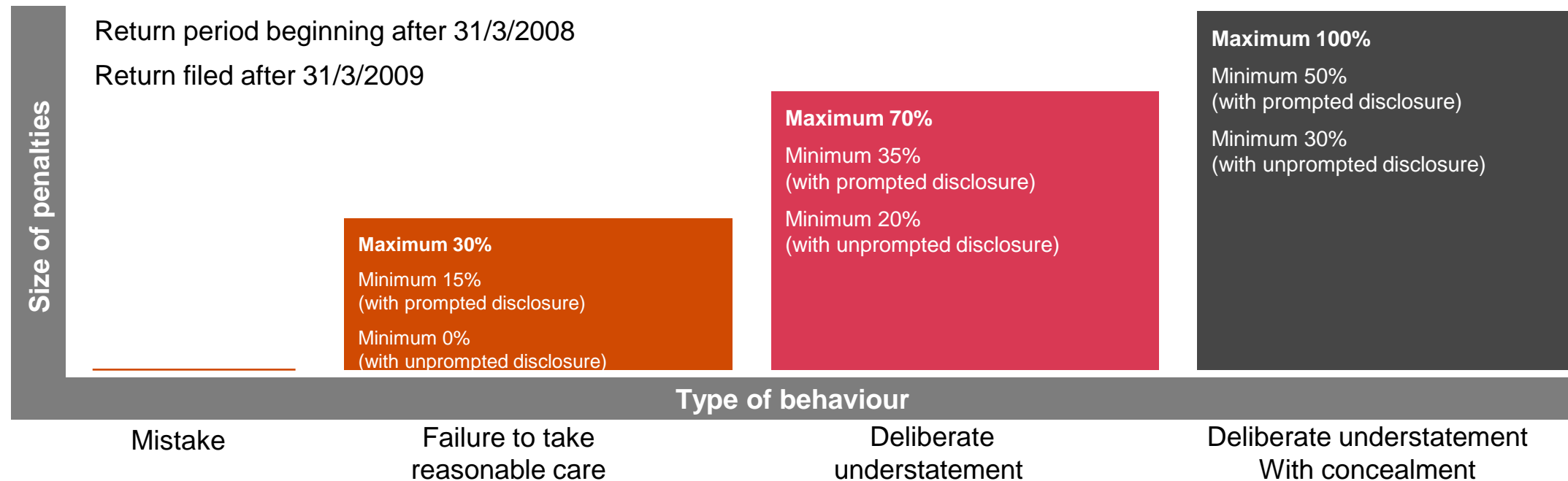
- Partial Closure Notice
- Final Closure Notice

Once a closure notice have been issued, you can appeal against the conclusions or amendments to the First Tier Tribunal.



Penalties

If you are assessed to additional tax at the end of an enquiry, HMRC will also consider penalties. Penalties are a % of “potential lost revenue” and that % is based on the behaviour that lead to the underpayment of tax, mitigated by cooperative behaviour during an enquiry.



Disagreement

Disagreement
with tax decision

Disagreement
with penalty

Statutory review

ADR

Appeal
to the FTT

Tax litigation

Litigation settlement strategy (LSS)

HMRC can't enter into a settlement without a **technical basis** – the settlement has to be a position that a court or tribunal could reach

- **Key Objectives:** Consistency/Efficiency/Professionalism
- **Resolution Principles:** Legal compliance/
Cost-effectiveness/Precedent value
- Each dispute must be resolved on its own merits,
not as part of an overall package deal.



Tax litigation vs. commercial disputes

	Tax dispute	Commercial dispute
Initiation	Disagreement with HMRC on tax matters.	Disagreements between individuals and/or businesses on contractual relationships or commercial transactions.
Courts	First-tier Tribunal, Upper Tribunal, Court of Appeal, Supreme Court. Judicial Review: Administrative Court/Upper Tribunal.	County Court - High Court (and its subdivisions) Court of Appeal Supreme Court. The High Court can be a court of first instance.
Procedural rules	FTT and UT Rules. CPR does not apply to tax tribunals. The tribunals enforce compliance with their own rules and pay close regard to CPR principles.	Civil Procedure Rules (CPR).
Disclosure	Documents that are 'reasonably required' – no duty of candour (other than in JR).	Standard disclosure: required to disclose documents that support and harm the appellant's case, and also that support the other party's case.
Burden of proof	Often (but not always) with the taxpayer to demonstrate that HMRC's assessment is incorrect.	Claimant to prove the case on a balance of probabilities.
Settlement	Settlements must comply with HMRC's Litigation and Settlement Strategy (LSS).	The parties can reach compromise settlements that may not reflect the legal merits of the case.
Alternative dispute resolution	Not commonly undertaken, but increasingly considered. "Tax facts" disclosed are not protected by without prejudice and can be used in future proceedings.	Common Without prejudice to encourage open negotiations.
International interactions	Joint audits enable tax authorities to jointly conduct tax audits with the tax auditors of other countries.	Usually limited to the jurisdiction of England & Wales.

Handling a dispute

Resolving a dispute means managing interactions with HMRC

01

Consider validity of notice/discovery assessment.

02

Effective management during an open enquiry – telling/helping/giving.

03

Understanding what HMRC is entitled to.

04

Knowing when to push back/request closure notices/litigate.

Thank you

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